

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Aydin T. Oner,) Case No. 15-15506
Plaintiff/Appellant,)
)
v.) **FEDERAL NATIONAL MORTGAGE**
) **ASSOCIATION'S and SETERUS, INC.'S**
) **(APPELLEES') RESPONSE TO**
Federal National Mortgage Association; Seterus,) **APPELLANT'S OPPOSITION TO**
Inc., Ocwen Loan Servicing, Inc.;) **MOTION(S) TO DISMISS APPEAL**
CitiMortgage, Inc.; and National Default)
Servicing Corporation,)
)
Defendant/Appellees.)

FACTS

The facts in this matter are convoluted, and the following information has, in whole or in part, been previously brought to the Court's attention in earlier pleadings. This case has a substantial prior history of litigation as between Appellant and Appellees in the Nevada state

1 courts (as detailed in Appellants' Motion to Dismiss in the Bankruptcy Adversary Case 14-
2 01112-mkn – discussed *infra*), and has travelled far and wide before coming into this Court.
3 The instant matter is an appeal from an Order of Dismissal of Appeal from the United States
4 District Court, District of Nevada, the Hon. James C. Mahan presiding. The matter before Judge
5 Mahan was, in turn, an appeal (the US District Court sitting in an appellate level capacity) by
6 Appellant from a court order from the United States Bankruptcy Court, District of Nevada, the
7 Hon Mike K. Nakagawa presiding, which dismissed Appellant's (Plaintiff therein) bankruptcy
8 adversary case (adv. case no. 14-01112-mkn) within the matter of In re: Aydin T. Oner, Chapter
9 13 Bankruptcy case no. 14-14200-mkn. This is the second of two failed bankruptcy cases the
10 Appellant has filed. In all cases mentioned above, as well as in the instant case, the
11 Debtor/Plaintiff/Appellant failed to take action in proper prosecution of the matters and was
12 thus dismissed in each and every case.

13 In or around January 21, 2011, the Appellant filed a Chapter 13 Bankruptcy case, case
14 no. 11-10825-mkn. The Appellant failed to properly prosecute the case and file required
15 documents pursuant to 11 U.S.C. sec 521(a) and thus was dismissed by the Chapter 13 Trustee
16 on March 23, 2011. Please see attached Exhibit A to Appellees' Motion to Dismiss dated
17 August 28, 2015.

18 In or around August 2012, Appellees, who are mortgage creditors, instituted foreclosure
19 proceedings on Appellant's real propert(ies), and obtained judgment to do so in May 2014.
20 Please see attached Exhibit B and C to Appellees' Motion to Dismiss dated August 28, 2015.

21 In or around June 2014, and prior to the scheduled foreclosure sale date, the Appellant
22 filed for Chapter 13 bankruptcy relief in the District of Nevada. In or around August 2014, a
23 creditor and the presiding Chapter 13 Trustee filed motions to dismiss bankruptcy case for the
24 Appellant's (then the Debtor's) failure to file necessary documents (most glaringly a Chapter 13
25 Plan of Reorganization) in prosecution of the case pursuant to 11 U.S.C. Sec. 521(i). The case
26 was indeed dismissed on August 27, 2014. Please see Exhibit D to Appellees' Motion to
27 Dismiss dated August 28, 2015.

28 Prior to said dismissal, the Appellant filed his adversary complaint within the
29 bankruptcy case, Adv. No. 14-01112-mkn, thus availing himself to said jurisdiction (and in fact

1 alleges such jurisdiction in his Complaint). A copy of the case docket and Complaint are
2 attached Exhibit E and F to Appellees' Motion to Dismiss dated August 28, 2015. All
3 defendants therein (Appellees herein) filed respective motions to dismiss that case, and the
4 Bankruptcy Court granted the dismissal(s) based upon insufficiency of the Appellant's (the then
5 Plaintiff's) Complaint therein in September/November 2014. Please see Exhibit G to
6 Appellees' Motion to Dismiss dated August 28, 2015.

7 Shortly thereafter, Appellant filed his appeal of the dismissal orders to the United States
8 District Court, as case no. 14-cv-01604, before the Hon. James C. Mahan. The Appellant's
9 appeal brief was initially due to be filed on January 24, 2015, as ordered by Judge Mahan on
10 January 7, 2015. On or about January 20, 2015, the Appellant filed a Motion to Extend Time to
11 file the opening brief. The Motion was granted by Judge Mahan on January 28, 2015, and the
12 date to file the opening brief was extended to February 9, 2015. However, the Appellant failed
13 to file his opening brief by February 9, 2015, and instead filed a self-styled "Motion to Hold
14 Appeal in Abeyance" on February 10, 2015. After consideration, Judge Mahan ordered a final
15 extension of time (up to March 6, 2015) to file an opening brief on March 3, 2015. Despite the
16 several extensions of time, the Appellant failed to file any opening brief in this case, and Judge
17 Mahan dismissed the appeal on March 13, 2015. Please see case docket as Exhibit "H" to
18 Appellees' Motion to Dismiss dated August 28, 2015

19 On or about March 30, 2015, the Appellant filed this instant appeal of Judge Mahan's
20 dismissal order of the US District Court Case, appealing the dismissal of the Bankruptcy
21 Adversary Case no. 14-01112. This constitutes the fifth case (not including the state court
22 litigation) in which the Appellant has compelled defendants/Appellees into fruitless litigation.
23 Ostensibly, and setting aside the disparaging remarks Appellant makes about the prior
24 Court/Judges and Defendants/Appellees, the Appellant seeks to appeal orders of dismissal and
25 raises issues that were simply NOT the bases for such dismissal orders. So, while the
26 Appellant does indeed file his opening brief, he apparently misses the point herein. As such,
27 this latest filing constitutes yet another effort at misdirection and mischief that (taken together
28 with Appellant's/Plaintiff's/Debtor's conduct throughout) unduly drags this Court (as with all of
29 the previous Courts) and Defendant/Appellees into a morass of meritless litigation. On the

1 above basis, Appellee Federal National Mortgage Association and Seterus, Inc. had filed its
2 Motion to Dismiss Appeal on August 28, 2015.

3 And finally, as yet additional evidence of the Appellant's intentions herein, he has
4 further engaged in dilatory conduct in extending the deadline to answer said Motion(s) to
5 Dismiss and has filed yet another untimely and misdirected "Opposition" thereto that is long on
6 buying time but preciously short on substance. Thus, this instant matter represents a long and
7 consistent history of Mr. Oner's exploitation of legal process for the purpose of delay without
8 any substantive furtherance of any of Appellant's purported remedies/causes of action, and must
9 be dismissed without further ado.

11 ARGUMENT

12 In the first instance, the Appellant's "Opposition" to the Motion(s) to Dismiss is
13 untimely. The Appellant sought and received an extension of time to file a substantive
14 opposition up until September 28, 2015. Please see docket entry no. 22 herein. The Appellant
15 filed his Opposition on September 30, 2015, and it is untimely. Appellees request that this
16 pleading be struck on that basis pursuant to this Court's order.

17 In the second instance, the "Opposition" contains no substance and the appeal(s) were
18 without merit from their inception.

19 The subject of this instant appeal is the Order of Dismissal of Appeal in the United
20 States District Court case no. 2:14-cv-01604-JCM entered on March 13, 2015. Please see the
21 Notice of Appeal filed in the aforementioned case on March 16, 2015 as Exhibit "A." Despite
22 the clear framing of the issues/Order in question, the Appellant instead exclusively concerns
23 himself with the order of Judge Nakagawa in Bankruptcy case no. (adversary) 14-01112-mkn.
24 This, however, was the subject of the prior appeal in the United States District Court, case no.
25 2:14-cv-01604-JCM. See the Appellant's Notice of Appeal dated September 29, 2014 as
26 Exhibit "B."

27 The Appellant, in the instant case, does not enunciate any standards of review and or
28 legal principles in dispute of Judge Mahan's Order of Dismissal. As such, and as mentioned by
29 all the Appellees herein, Motions to Dismiss the Appeal were filed before this Court.

1 Furthermore, the Appellant's "Opposition" to said Motion(s) to Dismiss do not add any
2 additional clarification or foundation for the appeal of Judge Mahan's Order of Dismissal. It
3 simply concludes that the Order is "illegal" and leaves it at that.

4 What the "Opposition" does discuss, however, is the belated appeal of Judge
5 Nakagawa's Order of Dismissal some two legal proceedings beforehand. Again, that was the
6 subject of the prior appeal, and despite the several extensions of time in which to file his brief
7 therein, the Appellant quite simply never filed his brief, even where directly ordered to do so by
8 the Judge, in USDC case no. 2:14-cv-01604-JCM. The Appellant had ample opportunity for
9 Court examination of same, and purportedly knew of the issues he'd wanted to present, but
10 squandered that opportunity because he did not file his opening brief. That issue is moot now,
11 but the Appellant continues to cling to it despite being clearly outside the scope of this instant
12 appeal.

13 Though Judge Nakagawa's Order(s) of Dismissal are obviously irrelevant here, even a
14 cursory examination of those circumstances reveal the misguided nature and meritless nature of
15 that "appeal" (and indicative of all of the Appellant's intentions over the span of the litigation
16 he has instituted). The Dismissal Orders issued by Judge Nakagawa all involved sufficiency of
17 pleadings under Fed.R.Civ.Pro. 12(b) and 9. Appellant has never acknowledged that basis for
18 the Orders and/or as a basis for the appeal therefrom. The demand for review under 11 U.S.C.
19 Sec. 157 is irrelevant as the Orders were not made on said basis. Furthermore, the United States
20 Bankruptcy Court had specifically mentioned that jurisdiction was proper pursuant to 11 U.S.C.
21 Sec. 157(b)(2)(K), and the Complaint/action was therefore a "core" proceeding. Please see
22 footnote 4, Order of Dismissal dated November 10, 2014, Bk Adv.. No. 14-01112-mkn, as
23 Exhibit "C.". Even assuming arguendo that it was not a "core" proceeding, the Appellant
24 clearly and explicitly consented to/acknowledged jurisdiction by virtue of the case filing (in fact
25 three filings) before United States Bankruptcy Court. Please see the attached Complaint,
26 Paragraph 1, subparagraph 2(A), filed in Bankruptcy case no. 14-01112-mkn, as Exhibit "D,"
27 and in conjunction with Wellness Int'l Network, Ltd v. Sharif, 575 U.S. ____ (2015). This
28 erroneously claimed issue on appeal is without substance, and represents yet another example of
29 the Appellant's campaign of delay since 2011, in which cases were filed but ultimately

1 dismissed because the Appellant either failed to properly prosecute the matter and/or it lacked
2 merit from the outset.

3
4 WHEREFORE, Appellees pray for judgment as follows:

- 5 1. That the "Opposition" to the Motion(s) to Dismiss Appeal be struck as untimely
6 2. For an Order dismissing the instant case in its entirety as to all appellees.
7 3. For attorneys' fees and costs incurred herein.
8 4. For such other relief as the Court deems proper.

9
10 Dated: October 6, 2015

McCarthy & Holthus, LLP

11
12
13 By: /s/ Michael Chen

Michael Chen, Esq.

14 Attorney for Appellees Federal National Mortgage
15 Association and Seterus, Inc.
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CERTIFICATE OF SERVICE

On October 6, 2015 I served the foregoing documents described as **FEDERAL NATIONAL MORTGAGE ASSOCIATION'S and SETERUS, INC.'S (APPELLEES') RESPONSE TO OPPOSITION TO MOTION TO DISMISS APPEAL** on the following individuals by electronic means through the Court's ECF program:

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/Joni Rispalje

Joni Rispalje

On October 6, 2015, I served the foregoing documents described as **FEDERAL NATIONAL MORTGAGE ASSOCIATION'S and SETERUS, INC.'S (APPELLEES') RESPONSE TO OPPOSITION TO MOTION TO DISMISS APPEAL**, on the following individuals by depositing true copies thereof in the United States mail at San Diego, CA, enclosed in a sealed envelope, with postage paid, addressed as follows:

Appellant Aydin T. Oner
3733 Misty Falls Street
Las Vegas, NV 89129

Victoria Hightower, Esq.
Wright Finlay & Zak, LLP
7785 W. Sahara Ave. Suite 200
Las Vegas, NV 89117
Attorney for Ocwen Loan Servicing

Matthew K. Schriever, Esq.
Tiffany & Bosco, P.A.
212 South Jones Boulevard
Las Vegas, NV 89107
Attorney for Citimortgage, Inc. and NDSC

EXHIBIT 1

Aydin T. Oner, Appellant *in proper person*
 3733 Misty Falls Street
 Las Vegas, NV 89129
 Telephone: 702-353-4331

FILED	RECEIVED
ENTERED	SERVED ON
COUNSEL/PARTIES OF RECORD	
MAR 16 2015	
CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY: _____	DEPUTY _____

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

In re "AYDIN T ONER," Debtor

AYDIN T. ONER,
Plaintiff/Appellant,

v.

CITIMORTGAGE, INC., and
NATIONAL DEFAULT SERVICING
CORPORATION, *et al.*,

Defendants/Appellees.

Case No: 2:14-cv-01604-JCM

Appeal from bankruptcy cases (Chapter 13):

Case No.: 14-14200-mkn

Adversary No.: 14-01112-mkn

APPELLANT'S NOTICE OF APPEAL -
28 U.S.C.A. § 1291

I give notice hereby I appeal this court's final "Order" and "JUDGMENT IN A CIVIL CASE." This appeal is pursuant to 28 U.S.C.A. § 1291 and timely filed.¹

Among Judge Mahan's many errors, boiled down for the purposes of this Notice he:

FIRST, either did not read my submissions or lied in his Order #25.

On page 2 he said:

"Appellate merely asserts that defendants have "either ousted or coerced [his] tenants to vacate . . . depriving [him] of the rent [he is] due . . ." (Doc. # 20).

Appellant cites no relevant authority to support his claim or

¹ Docket ##26-27, both were entered: "03/13/2015"; see also *Munoz v. Small Business Administration*, 644 F.2d 1361, 1364 (9th Cir. 1981): "an appeal from the final judgment draws in question all earlier non-final orders and all rulings which produced the judgment."

anything in the instant motion.”²

*If he had actually read my “Motion To Hold Appeal In Abeyance” he would have seen my citation of no less than *ten* “relevant authorit[ies] to support [my] claim or anything in the instant motion.”³*

This is also proof of Judge Mahan's *first* deliberate and manifest error of fact.⁴

SECOND, proved he is corrupted and willing to commit a manifest injustice against me.⁵ In Order #25 Judge Mahan said:

“IT IS FURTHER ORDERED that appellant shall file his opening brief before 5:00 P.M. on Friday, March 6, 2015. The court cautions appellant that if he fails to file his opening brief by this deadline, the court may impose sanctions, including dismissal of appellant’s appeal.”

In Order #26,⁶ page 2, he said:

“The court sua sponte granted appellant an additional extension through March 6, 2015. (Doc. # 25). The court cautioned appellant that if he failed to file his opening brief by the March 6, 2015 deadline, the court may impose sanctions, including dismissal of his appeal.”

² Please note my emphasis added to quoted text is in boldface

³ Besides other authorities cited where appropriate, including reminding Judge Mahan of his “inherent authority to order this appeal's abeyance,” supported by my Footnote 11, there is my Motion's *conspicuous* heading “AUTHORITIES SUPPORTING THIS MOTION” on page 2

⁴ “An error that is plain and indisputable, **and that amounts to a complete disregard of the controlling law or the credible evidence in the record.**” Black's Law Dictionary 582 (8th ed. 2004)

⁵ “An error in the trial court that is direct, obvious, and observable” - same Black's, page 982

⁶ Being too eager to manufacture this Order is *not* “in accord with traditional equitable principles and without the aid of presumptions” - *Perfect 10, Inc. v. Google, Inc.*, 653 F.3d 976, 981 (9th Circuit 2011)

This utterly corrupted judge set me up to fail.⁷ The case record shows “(Doc. # 25)” was filed “03/03/2015.” I am able to truthfully swear under oath I did not receive it until I got my mail after coming home from work Thursday evening *March 5th*. I doubt even a competent and fully-staffed law firm could have met a deadline of less than 24 hours.

THIRD, Judge Mahan further proved he is corrupted and willing to commit a manifest injustice against me by putting his thumb on the scales of justice to favor the other parties in violation of his oath! That he did this is evident throughout this case record. He bootstrapped⁸ at least his last two orders by endorsing the fact Judge Nakagawa flouted 28 U.S.C. § 157(c)'s restrictions on bankruptcy jurisdiction, then denied me a full and fair adjudication on the merits, then legalized the fraud these Defendants perpetrated on the courts and on me.⁹ It's plainly and painfully obvious Judge Mahan arrogated to himself authority in the same manner as Judge Nakagawa, with his pen.¹⁰ By doing so he not only “legalized” the fraud Defendants/Appellees perpetrated on both the bankruptcy and this court, he actively aided and abetted them “going around and above the law,”¹¹ as well as in avoiding “the resulting consequences provided for by the Negotiable Instruments Law.”¹²

7 “If you get a corrupt judge you destroy the laws. . .” the *actually honorable* Judge Ruben P. Boise, as reported by the Oregonian, August 26, 1857

8 “bootstrap . . . To reach an unsupported conclusion from questionable premises.” - same Black's, page 195

9 *McCausland v. Ralston*, 12 Nev. 195, 216 (1877): “. . .the courts can never be called upon to legalize a fraud. . .”

10 “claiming or taking something without the right to do so” - same Black's, page 118

11 *Whitehead v. Comm'n on Jud. Discipline*, 110 Nev. 874, 907 (1994)

12 *Stewart and Horrton v. Austrand*, 78 Nev. 447, 453 (1962)

IN CONCLUSION, I believe despite my not being any kind of legal professional, and relying chiefly on what I can find on the internet (which does *not* include Westlaw, which seems to no longer accept credit card payments from ordinary people like me), I have fully briefed this court on what the law says it must and must *not* do in this case. For this matter at hand, that begins with my Motion for Abeyance and Reply to defendants absolute joke of an Opposition.¹³ The case record amply shows instead of respecting and protecting my rights to defend my properties against Defendants' fraudulent claims, Judge Mahan did what the Rules Enabling Act forbids, he bought into what Defendants moved and pleaded for and used federal procedural law as an excuse for abridging my rights.¹⁴ "Abridge" is defined as "To reduce or diminish."¹⁵ This judge more than deserves the same criticism the Ninth Circuit made against another arrogant, obstructing federal judge in *this* District: "Such arrogance and assumption of power by one individual is not acceptable in our judicial system."¹⁶

Unfortunately, and tragically for ordinary people like me seeking justice from this court's assigned judge, who got a starting salary of \$170,000 a year on the backs of hard-working people like me, my research shows it literally takes an act of Congress to discipline him. I therefore seem to have no recourse for this manifest injustice and neither this court nor the Ninth Circuit offers *anything* to even disqualify him or replace him an actually competent and impartial judge. So I must appeal.

¹³ Docket ##20, 24

¹⁴ 28 U.S.C.A. § 2072(b) requires that federal procedural rules "not abridge, enlarge or modify any substantive right"

¹⁵ Same Black's, page 6

¹⁶ *Wendy Townley; Amy Whitlock; Ashley Gunson; Heather Thomas; Dax Wood v. Ross Miller, Secretary of State of Nevada*, 693 F.3d 1041, 1042 (9th Cir. 09/05/2012), Judge Reinhardt concurring

I expressly reserve the right to amend or supplement this Notice if I believe it is needed. I also reserve my right to to have the court construe this paper equitably and according to FRBP 1001, FRCP 1 and 7008(a).

Submitted with all rights reserved on March 16, 2015



Aydin T. Oner, Appellant *in proper person*

CERTIFICATE OF SERVICE

I certify that on this date I mailed a true copy of this Notice to:

McCarthy Holthus, LLP
9510 West Sahara Avenue, Suite 110
Las Vegas, NV 89117

U.S. Trustee, Las Vegas
300 Las Vegas Boulevard South, Suite 4300
Las Vegas, NV 89101-5803

Gregory L. Wilde (representing CitiMortgage, Inc., and National
Default Servicing Corporation)
208 S. Jones Blvd.
Las Vegas, NV 89107

Smith Larsen Wixom LLP (representing Ocwen Loan Servicing, Inc.)
1935 Village Center Circle
Las Vegas, NV 89134

Submitted with all rights reserved on March 16, 2015



Aydin T. Oner, Appellant *in proper person*

EXHIBIT 2

Aydin T. Oner, Debtor and Adversary Plaintiff *in proper person*
3733 Misty Falls Street
Las Vegas, NV 89129
Telephone: 702-353-4331

RECEIVED

AND FILED

2014 SEP 29 PM 1 05

U.S. BANKRUPTCY COURT
MARY A. SCHOTT, CLERK

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re "AYDIN T ONER,"

Debtor.

Case No.: 14-14200-mkn

Chapter 13

CITIMORTGAGE, INC., AND
NATIONAL DEFAULT SERVICING
CORPORATION; FEDERAL
NATIONAL MORTGAGE
ASSOCIATION AND SETERUS, INC.;
and OCWEN LOAN SERVICING, INC.,

Defendants

Adversary No.: 14-01112-mkn

PLAINTIFF'S NOTICE OF APPEAL -
28 U.S.C.A. § 158(a)

I appeal this court's "ORDER DISMISSING ADVERSARY COMPLAINT AS
TO FEDERAL NATIONAL MORTGAGE ASSOCIATION, SETERUS, INC., AND
OCWEN LOAN SERVICING, LLC."¹

This appeal is pursuant to 28 U.S.C.A. § 158(a) and timely if it is filed and
served no later than the 14th day from the Order's entry on September 23, 2014.²

To the best of my knowledge and belief, all other parties to the this Order
are:³

¹ See docket #21

² See FRBP 8002(a)

³ See FRBP 8001(a)

219/98 \$ 298-

Federal National Mortgage Association and Seterus, Inc., represented by:

"Michael W. Chen by McCarthy Holthus, LLP"
9510 West Sahara Avenue, Suite 110
Las Vegas, NV 89117
(702) 685-0329

Ocwen Loan Servicing, Inc. represented by:

"Raymond A. Jereza by Wright, Finlay & Zak, LLP"
5532 S. Fort Apache Road, Suite 110
Las Vegas, NV 89148
702-475-7964

"Trustees":

Rick A. Yarnall
701 Bridger Ave., #820
Las Vegas, NV 89101
(702) 853-4500

Kathleen A. Leavitt
201 Las Vegas Blvd. S. #200
Las Vegas, NV 89101
(702) 853-0700

I expressly reserve the right to amend or supplement this Notice if I believe it is needed. I also reserve my right to have the court construe this paper equitably and according to FRBP 1001.

Submitted with all rights reserved on September 29, 2014

A handwritten signature in black ink, appearing to read 'Aydin T. Oner', with a stylized, cursive script.

Aydin T. Oner, Debtor and Adversary Plaintiff *in proper person*



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
September 23, 2014

Kristin A. Schuler-Hintz, Esq. SBN 7171

Michael Chen, Esq. SBN 7307

E-filed: 9/22/2014

McCarthy & Holthus, LLP

9510 West Sahara Avenue, Suite 200

Las Vegas, NV 89117

Phone (877) 369-6122

Fax (866) 339-5691

NVBK@McCarthyHolthus.com

Attorneys for Defendants Federal National Mortgage Association, Inc. and Seterus, Inc.

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:

) Adv. No. 14-01112-mkn

) BK Case No.: 14-14200-mkn

Aydin T Oner,

)

) Chapter 13

Debtor.

)

) DATE: September 10, 2014

Aydin T Oner,

)

) TIME: 9:30AM

Plaintiff,

)

v.

) **ORDER DISMISSING ADVERSARY**

CitiMortgage, Inc., National Default Servicing

) **COMPLAINT AS TO FEDERAL**

Corp., Federal National Mortgage Assoc.,

) **NATIONAL MORTGAGE**

Seterus, Inc., and Ocwen Loan Servicing, LLC

) **ASSOCIATION, SETERUS, INC., AND**

Defendants.

) **OCWEN LOAN SERVICING, LLC**

The Defendants', Federal National Mortgage Assoc., Inc. and Seterus, Inc., Motion to Dismiss the Adversary Complaint, with Joinder filed by Ocwen Loan Servicing, LLC, servicer for US Bank National Association, as Trustee for the C-BASS Mortgage Loan Asset Backed Certificates, Series 2006-MH1, having come on regularly for hearing at the date and time set forth above before the United States Bankruptcy Court, the Hon. Gary Allen Spraker presiding. Upon review of the Motion and supporting evidence, and good cause appearing, the Court finds as follows:

The Plaintiff failing to plead any plausible non-conclusory facts and/or legal theories in support of any of the stated causes of action herein, and as against aforementioned Defendants, thus failing to satisfy the standards of pleading under Federal Rules of Civil Procedure Rule 8 and 12(b)(6), and as enunciated in Ashcroft v. Iqbal, 556 U.S 662 (2009), accordingly;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Plaintiff's Opposition to the Motion to Dismiss is denied.

IT IS FURTHER ORDERED that all counts of the Plaintiff's Complaint are dismissed without prejudice as to Defendants Federal National Mortgage Association, Inc., Seterus, Inc., and Ocwen Loan Servicing, LLC, servicer for US Bank National Association, as Trustee for the C-BASS Mortgage Loan Asset Backed Certificates, Series 2006-MH1.

IT IS FURTHER ORDERED that dismissal of the Complaint in its entirety as to the aforementioned Defendants is done so without leave to amend said Complaint by the Plaintiff.

IT IS SO ORDERED.

Submitted by:
McCarthy & Holthus, LLP

/s/Michael Chen
Michael Chen, Esq.
9510 West Sahara Avenue, Suite 200
Las Vegas, NV 89117
(877) 369-6122

///

1 Approved/Disapproved

2 /s/Christopher L. Benner 09/10/14

3 Christopher L. Benner
4 Attorney for Ocwen Loan Servicing, LLC, as servicer for
5 US Bank National Association, as Trustee for the C-BASS
6 Mortgage Loan Asset Backed Certificates, Series 2006-MH1

7 Approved/Disapproved

8 Mailed by USPS 9/10/14-no response received

9 Aydin T. Oner
10 3733 Misty Falls Street
11 Las Vegas, NV 89129
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ALTERNATIVE METHOD re: RULE 9021:

In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that (check one):

☐ The court has waived the requirement set forth in LR 9021(b)(1).

☐ No party appeared at the hearing or filed an objection to the motion.

☒ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below [list each party and whether the party has approved, disapproved, or failed to respond to the document]:

Counsel appearing: None

Counsel for Ocwen Loan Servicing, LLC. Christopher L. Benner – signed 09/10/14

Unrepresented parties appearing: None

Trustee: No Appearance at Hearing, No Additional Service Required

☐ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

Submitted by:
McCarthy & Holthus, LLP

/s/ Michael Chen, Esq.

Michael Chen, Esq. SBN 7307

EXHIBIT 3



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
November 10, 2014

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:)	Case No.: 14-14200-MKN
)	
AYDIN T. ONER,)	Chapter 13
)	
Debtor.)	
)	
AYDIN T. ONER,)	Adv. No. 14-01112-MKN
)	
Plaintiff,)	
v.)	
)	
CITIMORTGAGE, INC., AND NATIONAL)	Date: November 4, 2014
DEFAULT SERVICING CORPORATION, et)	Time: 9:30 a.m.
al.,)	
)	
Defendants.)	
)	

ORDER ON MOTION TO DISMISS¹

On November 4, 2014, the court heard the Motion to Dismiss filed by Defendants, CitiMortgage, Inc. and National Default Servicing Corporation. The appearances of counsel and

¹ In this Order, all references to "ECF No." are to the numbers assigned to the documents filed in the above-captioned bankruptcy case as they appear on the docket maintained by the clerk of the court. All references to "AECF No." are to the documents filed in the above-captioned adversary proceeding. All references to "Section" are to the provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532. All references to "FRBP" are to the Federal Rules of Bankruptcy Procedure. All references to "FRCP" are to the Federal Rules of Civil Procedure.

1 the parties were noted on the record. After oral arguments were presented, the matter was taken
2 under submission.

3 BACKGROUND

4 On June 17, 2014, Aydin T. Oner ("Debtor") filed a voluntary Chapter 13 petition. (ECF
5 No. 1). The case was assigned to bankruptcy trustee Rick Yarnall ("Chapter 13 Trustee"). (ECF
6 No. 2). The petition was not accompanied by schedules of assets and liabilities nor the other
7 information required by Section 521(a)(1). Under Section 521(i), Debtor had until August 1,
8 2014, to file all of the information required by Section 521(a)(1), or his Chapter 13 proceeding
9 would be automatically dismissed effective August 2, 2014.

10 On July 8, 2014, Debtor filed numerous schedules of information required by Section
11 521(a)(1), but not all of them. (ECF No. 19).

12 On July 10, 2014, Debtor commenced the above-captioned adversary proceeding by
13 filing an adversary complaint bearing the title "Complaint for Declaratory and Injunctive Relief"
14 ("Complaint"). (AECF No. 1). Defendants named in the Complaint are CitiMortgage, Inc.
15 ("Citi") and National Default Servicing Corporation ("NDSC") with respect to a property located
16 at 3733 Misty Falls Street, Las Vegas, Nevada ("Misty Falls Property"); Federal National
17 Mortgage Association ("FNMA") and Seterus, Inc. ("Seterus") with respect to a property located
18 at 1212 Pacific Terrace Drive, Las Vegas, Nevada; and Ocwen Loan Servicing, Inc. ("Ocwen")
19 with respect to a property located at 5080 North Jerry Avenue, Pahrump, Nevada. The
20 Complaint apparently seeks a declaratory judgment pursuant to FRBP 7001(9) to determine the
21 validity, priority or extent of any lien against the aforementioned properties pursuant to FRBP
22 7001(2).

23 On August 5, 2014, a motion to dismiss the Debtor's Chapter 13 proceeding was filed by
24 Ocwen Loan Servicing, LLC, based on automatic dismissal requirement of Section 521(i). (ECF
25 No. 29).

26 On August 8, 2014, a motion to dismiss the Complaint was filed by FNMA and Seterus.

(AECF No. 8).

On August 11, 2014, Debtor filed opposition to Ocwen's motion to dismiss the bankruptcy proceeding. (ECF No. 32).

On August 20, 2014, the Chapter 13 Trustee also filed a motion to dismiss the bankruptcy proceeding under Section 521(i). (ECF No. 35).

On August 20, 2014, Debtor filed a statement of financial affairs. (ECF No. 36).

On August 22, 2014, Debtor filed opposition to the Chapter 13 Trustee's motion to dismiss the bankruptcy proceeding. (ECF No. 37).

On August 27, 2014, an order was entered granting the Chapter 13 Trustee's motion to dismiss pursuant to Section 521(i). (ECF No. 41).²

On September 2, 2014, Ocwen joined in the motion brought by FNMA and Seterus to dismiss the Complaint. (AECF No. 12).

On September 2, 2014, Debtor filed an opposition to the FNMA and Seterus' motion to dismiss. ("Debtor's FNMA Opposition") (AECF No. 15).³

² On January 21, 2011, Debtor commenced a prior Chapter 13 proceeding denominated Case No. 11-10825. On March 23, 2011, an order was entered dismissing the case under Section 521(i) because of the Debtor's failure to file the information required by Section 521(a)(1). On August 8, 2013, Debtor commenced another Chapter 13 proceeding denominated Case No. 13-17116. On October 10, 2013, an order was entered dismissing the case under Section 521(i) due to the Debtor's failure to file the information required by Section 521(a)(1). Because the Debtor filed the most recent bankruptcy proceeding within one year of the dismissal of his second case, the automatic stay under Section 362(a) was effective for only thirty days under Section 362(c)(3)(A). The record reflects that the Debtor did not seek to continue the automatic stay by filing a motion under Section 362(c)(3)(B), and therefore the automatic stay terminated as to the Debtor as well as the bankruptcy estate. See Reswick v. Reswick (In re Reswick), 446 B.R. 362, 366-67 (B.A.P. 9th Cir. 2011).

³ Debtor argued that the motion to dismiss brought by FNMA and Seterus was not properly before the court because the moving parties had not filed a corporate ownership statement required by FRBP 7007.1. See Debtor's FNMA Opposition at 2. While Debtor is correct that none of the defendants in the adversary proceeding have filed the corporate ownership statement required by FRBP 7007.1, he cited no authority indicating that such failure precludes consideration of a pleading motion. Debtor also asserted a number of actions he

On September 3, 2014, Citi and NDSC filed a separate motion to dismiss the Complaint (“Citi Dismissal Motion”). (AECF No. 13).

On September 9, 2014, FNMA and Seterus filed a reply to the Debtor’s opposition. (AECF No. 18).

On September 10, 2014, a hearing on the motion to dismiss brought by FNMA and Seterus was held and the motion was granted.

On September 23, 2014, a written order was entered dismissing the Complaint as to FNMA, Seterus and Ocwen (“FNMA Dismissal Order”). (AECF No. 21).

On September 29, 2014, Debtor appealed the FNMA Dismissal Order. (AECF No. 23).

On October 7, 2014, Debtor filed opposition (“Opposition”) to the Citi Dismissal Motion. (AECF No. 35).⁴

On October 8, 2014, the hearing on the Citi Dismissal Motion was continued to November 4, 2014. (AECF No. 36).

DISCUSSION

The Citi Dismissal Motion is brought pursuant to FRCP 12(b)(6), applicable in this adversary proceeding pursuant to FRBP 7012.

“A dismissal under [FRCP] 12(b)(6) is essentially a ruling on a question of law.” N. Star Int’l v. Ariz. Corp. Comm’n, 720 F.2d 578, 580 (9th Cir. 1983) (citation omitted). “The court intends to take, but none of them address the sufficiency of the allegations actually contained in the Complaint. Id. at 3-4.

⁴ Debtor’s opposition to the Citi Dismissal Motion incorporates by reference the same arguments contained in Debtor’s FNMA Opposition. See note 3, supra. He also argues that this court’s ruling on the Citi Dismissal Motion is subject to de novo review on appeal under 28 U.S.C. § 157(c) because his Complaint involves a non-core matter. See Opposition at 2. Debtor ignores the language of 28 U.S.C. § 157(b)(2)(K) which specifically lists “determinations of the validity, extent, or priority of liens” among the core proceedings in which bankruptcy courts may issue a final order. In any event, a dismissal for failure to state a claim for relief is subject to de novo review on appeal because it is based on the legal sufficiency of a complaint. See Barnes v. Belice (In re Belice), 461 B.R. 564, 572 (B.A.P. 9th Cir. 2011).

may dismiss a complaint as a matter of law for ‘(1) lack of a cognizable legal theory or (2) insufficient facts under a cognizable legal claim.’” Smilecare Dental Grp. v. Delta Dental Plan of Cal., Inc., 88 F.3d 780, 783 (9th Cir. 1996), quoting Robertson v. Dean Witter Reynolds, Inc., 749 F.2d 530, 534 (9th Cir. 1984).

“To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)(quotations omitted), citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). In considering a dismissal motion, the court accepts as true all factual allegations made by, and draws all reasonable inferences in favor of, the plaintiff. See Belice, 461 B.R. at 573. Dismissal is appropriate if there is “a lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory.” Id. (citation and quotations omitted). The critical inquiry under either basis is whether the allegations in the complaint are well-pled. While the complaint need not contain “detailed factual allegations, a plaintiff’s obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action” Id., citing Twombly, 550 U.S. at 555 (quotations omitted). As such, a claim is facially plausible if there is factual content sufficient for “the court to draw the reasonable inference that the defendant is liable for the misconduct alleged” Id., citing Iqbal, 556 U.S. at 678.

The Complaint alleges that Citi and NDSC have “aggressively made claims” by “claiming status as a secured creditor” with respect to the Misty Falls Property. See Complaint at ¶ 2. The Complaint further alleges that the Debtor is entitled to a declaratory judgment to determine the validity, priority, or extent of a lien, and:

to clarify these properties’ titles:

- A. Under the *actual and genuine* instruments material to this case,
- B. Under applicable Nevada state property law, particularly conformance to the *Edelstein* reunification requirements;
- C. Declare who are the real parties in interest and who are strangers to the Notes and Deeds of Trust, particularly conformance to the *Leyva* standards; and

1 D. If any Defendants are found to be strangers in the case, to remove their clouds
2 from my title(s).

3 Complaint at ¶ 4 (italics in original). The Complaint further alleges that the Debtor may seek
4 injunctive relief and to recover “all costs and disbursements.” *Id.* at ¶¶ 5 and 6. The prayer of
5 requests that “this court declare my rights and other legal relations according to the above.” *Id.*
6 at ¶ 7.

7 The allegations of the Complaint are legally insufficient to state a claim for relief. While
8 the Debtor seeks a declaration of the validity, priority or extent of liens, he has alleged no facts
9 identifying a factual or legal dispute concerning the secured claims allegedly made, and made
10 “aggressively,” by Citi and NDSC. He has not identified any “instruments material to this case”
11 the genuineness of which is subject to question. He has not alleged any facts suggesting a failure
12 by Citi or NDSC to comply with any applicable Nevada law. He has not alleged any facts
13 implicating the factual and legal issues addressed by the Nevada Supreme Court in Edelstein v.
14 Bank of New York Mellon, 286 P.3d 249 (Nev. 2012) or Leyva v. Nat’l Default Servicing Corp.,
15 255 P.3d 1275 (Nev. 2011). He has not alleged any facts that would establish the existence of a
16 cloud on the title to the Misty Falls Property attributable to the conduct of Citi or NDSC. In
17 short, the Complaint has alleged the “labels and conclusions” found under FRBP 7001(2) and
18 7001(9), but it does not state a plausible basis for a claim for relief.

19 **IT IS THEREFORE ORDERED** that the Motion to Dismiss brought by defendants
20 CitiMortgage, Inc. and National Default Service Corporation, Adversary Docket No. 13, be, and
21 the same hereby is, **GRANTED**.

22 **IT IS FURTHER ORDERED** that plaintiff’s adversary proceeding is dismissed without
23 prejudice as to defendants CitiMortgage, Inc. and National Default Service Corporation.

24 **IT IS FURTHER ORDERED** that the continued scheduling conference currently
25 scheduled for January 8, 2015 at 10:00 a.m., is hereby **VACATED**.
26

1 Notice and Copies sent through:

2 CM/ECF ELECTRONIC NOTICING AND/OR
3 BNC MAILING MATRIX

4 and sent via FIRST CLASS MAIL BY THE COURT AND/OR BNC to:

5 AYDIN T ONER
6 3733 MISTY FALLS STREET
7 LAS VEGAS, NV 89129

8 ###

EXHIBIT 4

Aydin T. Oner, Debtor and Adversary Plaintiff *in proper person*
3733 Misty Falls Street
Las Vegas, NV 89129
Telephone: 702-353-4331

RECEIVED
AND FILED

2014 JUL 10 PM 2 15

U.S. BANKRUPTCY COURT
MARY A. SCHOTT, CLERK

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re "AYDIN T ONER,"

Debtor.

Case No.: 14-14200-mkn

Chapter 13

CITIMORTGAGE, INC., AND
NATIONAL DEFAULT SERVICING
CORPORATION; FEDERAL
NATIONAL MORTGAGE
ASSOCIATION AND SETERUS, INC.;
and OCWEN LOAN SERVICING, INC.,

Defendants

Adversary Proceeding No.

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

In this matter of three certain real properties, I ALLEGE:

1. Plaintiffs and Jurisdiction

I am the owner of record of the real properties which are the subject matter of this case. I commence this adversary complaint under this court's jurisdiction pursuant to Title 11 U.S.C.A. Appendix, Rules 7001(2) and (9) to:

(1) determine the validity or extent of Defendants' claims against my real properties, then

(2) clarify and remove any cloud from the titles. Further:

A. This court has prior-exclusive-and sole *in rem* jurisdiction over the subject

properties commonly known as:

- (1) 3733 Misty Falls Street, Las Vegas, Nevada;
- (2) 1212 Pacific Terrace Dr., Las Vegas, Nevada; and
- (3) 5080 North Jerry Avenue, Pahrump, Nevada.

B. Because the assigned trustee is the representative of the estate *per se* he is a co-Plaintiff as a matter of law.

2. Adversaries

Defendants have aggressively made claims against my properties without proving those claims adequately under Nevada law. They are:

A. Claiming status as a secured creditor on my Misty Falls property are CitiMortgage, Inc., and National Default Servicing Corporation.

B. Claiming status as a secured creditor on my Pacific Terrace property are Federal National Mortgage Association and Seterus, Inc.; and

C. Claiming status as a secured creditor on my Pahrump property is Ocwen Loan Servicing, Inc.

3. Rule 7008 statement

As required by FRBP 7008(a), to the best of my knowledge and understanding this is a non-core proceeding pursuant to 28 U.S.C.A. § 157.

4. Judgment sought

I am entitled to seek this court's declaratory judgment based on FRBP 7001

“to determine the validity, priority, or extent of a lien or other interest in property,”
and to clarify these properties' titles:

- A. Under the *actual and genuine* instruments material to this case,
- B. Under applicable Nevada state property law, particularly conformance to the *Edelstein* reunification requirements;
- C. Declare who are the real parties in interest and who are strangers to the Notes and Deeds of Trust, particularly conformance to the *Leyva* standards; and
- D. If any Defendants are found to be strangers in the case, to remove their clouds from my title(s).

5. Injunctive relief

The nature of declaratory proceedings provides I may also seek further necessary or proper relief. I reserve the right to invoke FRBP 7065 for injunctive relief to bar any Defendant from proceeding against my property during the pendency of this case.

6. Recovering my costs and disbursements

I reserve the right to recover all costs and disbursements at the appropriate stage of this case.

7. Request for relief

I pray this court declare my rights and other legal relations according to the above, and all other relief as this court finds lawful, just and equitable.

Aydin T. Oner, Debtor and Adversary Plaintiff *in proper person*

Handwritten signature